

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/09-01/15
Date: 1 December 2020

PRE-TRIAL CHAMBER A (ARTICLE 70)

Before: Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. PAUL GICHERU AND PHILIP KIPKOECH BETT***

Public

Paul Gicheru's Response to the Prosecution's written submissions concerning severance of the charges, registration and disclosure of evidence, and other procedural matters pertaining to pre-confirmation proceedings

Source: Counsel for Paul Gicheru

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor
Mr. James Stewart

Counsel for the Defence

Mr. Michael G. Karnavas

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Other

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

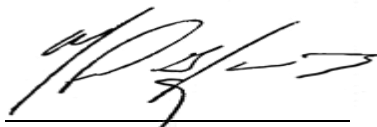
Other

Mr. Paul Gicheru, through his Counsel ("the Defence"), hereby responds to the Office of the Prosecutor's ("OTP") written submissions concerning severance of the charges, registration and disclosure of evidence, and other pre-confirmation procedural matters.¹

1. The Defence does not object to the severance.²
2. The Defence does not object to the proposed E-Court Protocol or Protocol for handling confidential information and contacting witnesses.³
3. Reasoned applications and prior authorization should be required for proposed redactions under categories "A.8" and "B.5" of the Chamber's Practice Manual and other non-standard redactions.⁴
4. Pseudonyms should be used for redacted names.⁵
5. The deadline for responses should be 10 days.⁶

Respectfully submitted, 1 December 2020,

In The Hague, the Netherlands.



Michael G. Karnavas
Counsel for Mr. Paul Gicheru

¹ *Prosecutor v. Gicheru and Bett*, [ICC-01/09-01/15-46](#), Prosecution's written submissions concerning self-representation, severance of the charges, registration and disclosure of evidence, and other procedural matters pertaining to pre-confirmation proceedings, 16 November 2020 ("OTP Submissions").

² [OTP Submissions](#), paras. 9-17.

³ [OTP Submissions](#), paras. 20, 23-26.

⁴ *Contra* [OTP Submissions](#), paras. 21-22. *See Prosecutor v. Al Hassan*, [ICC-01/12-01/18-546](#), Decision on the evidence disclosure protocol and other related matters, 30 December 2019, para. 14 (considering that redaction of "other information" under Rule 81(4) should be subject to judicial examination).

⁵ *See Prosecutor v. Yekatom*, [ICC-01/14-01/18-64-Red](#), Public Redacted Version of "Decision on Disclosure and Related Matters," 23 January 2019, para. 29. *See also Prosecutor v. Ntaganda*, [ICC-01/04-02/06-411](#), Decision on the Protocol establishing a redaction regime, 12 December 2014, para. 27 (where the Trial Chamber noted that the use of pseudonyms "enables the Defence to better contextualise the underlying information, [...] allow[s] the reader to identify whether the same person is referenced across multiple statements and increase[s] the usefulness of the material disclosed with redactions").

⁶ *Contra* [OTP Submissions](#), para. 27. The five-day deadline proposed by the OTP is impractical given that the Defence is working with a skeletal team in the early stages of the proceedings with only Lead Counsel and one Case Manager. Given the resource disparity between the OTP and the Defence, short response deadlines would place the Defence at a disadvantage, especially if the OTP were to file multiple submissions in a single day or file in the middle of the week so as to consume every weekend of the Defence to meet deadlines.